

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-217502

DATE: October 31, 1985

MATTER OF: Overtime Compensation - Work Performed
At Home

DIGEST:

1. The minimum 2-hour credit for unscheduled overtime work performed by Federal employees under the "call-back" overtime provisions of 5 U.S.C. § 5542(b)(1) is for the purpose of assuring adequate compensation to recalled employees for the particular inconveniences involved in their having to prepare for work and travel back to their work stations. Hence, the minimum 2-hour credit is not available on every occasion an employee performs unscheduled overtime work, notwithstanding that generally all unscheduled work inherently involves a certain amount of personal inconvenience, and employees who are called upon to perform unscheduled overtime work entirely within their homes are therefore ineligible for the statutory 2-hour minimum work credit.
2. Federal employees may be allowed overtime compensation based on the actual time involved for unscheduled overtime work they are called upon to perform at their places of residence, provided the work is of a substantial nature, and procedures are established for verifying the time and performance of the work. Federal Aviation Administration employees may be paid overtime compensation on that basis on occasions when they are called upon to use automated data processing equipment in their homes to adjust malfunctioning navigation instruments located elsewhere.

The question presented in this matter is whether employees of the Federal Aviation Administration who use automated data processing equipment in their homes to adjust malfunctioning navigation instruments located elsewhere may

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be credited on each occasion with the performance of a minimum of 2 hours' overtime work under the "call-back" overtime provisions of 5 U.S.C. § 5542(b)(1).^{1/} We conclude that the provisions of statute in question cannot properly be construed to permit the crediting of overtime in that manner.

Background

The Federal Aviation Administration is in the process of adapting its navigational aids to a new technology that will enable agency employees to monitor and adjust navigation instruments remotely, over telephone lines through the use of automated data processing equipment. This will allow employees to make the necessary adjustments from their homes in many instances, and will thus reduce the need when malfunctions occur during their off-duty hours for the employees to leave their homes and travel to airports and other places where the navigation devices are located.

On the occasions when agency employees are called upon to adjust the navigation instruments from their homes, it is anticipated that the work required of them will normally take less than 2 hours to complete. Since these employees are not required to remain at their homes or duty stations when on call they are not eligible for standby premium pay as authorized under 5 U.S.C. § 5545(c)(1). However, the agency suggests that this work may be inconvenient especially if sleep or personal plans are interrupted, and that overtime pay based solely on the amount of time the

^{1/} This action is in response to a request for a decision received from the Director of Personnel and Training of the Federal Aviation Administration. The request was submitted by the agency under 4 C.F.R. Part 22 as a matter of mutual concern to it and a labor organization, the Professional Airways Systems Specialists. The agency served the labor organization with a copy of the request for a decision, and the labor organization has agreed to be bound by this decision, subject to applicable appeal rights. See 4 C.F.R. §§ 22.4 and 22.7(b). Although decisions of the Comptroller General are not subject to administrative appeal or review, the Federal courts are under no requirement to follow or uphold them.

work is actually performed may prove to be inadequate compensation in light of this inconvenience. The agency therefore questions whether the employees may be credited with the performance of at least 2 hours' work on those occasions, as generally authorized under the "call-back" overtime provisions of 5 U.S.C. § 5542(b)(1) for Federal employees who are recalled to perform unscheduled overtime work.

Overtime Compensation under 5 U.S.C. § 5542(b)(1)

Subsection 5542(b)(1) of title 5, United States Code, provides that:

"(1) unscheduled overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is deemed at least 2 hours in duration;
* * *

This is derived from a law enacted by the Congress in 1954.^{2/} The congressional reports relating to the enactment of that law state that this was designed to cover an "employee called back to perform unscheduled overtime work after he has gone home."^{3/} The provision was sponsored before the Congress by the Civil Service Commission, in furtherance of findings and recommendations resulting from a study conducted jointly by the Commission and the Bureau of the Budget. The findings and recommendations as presented to the Congress stated that the minimum credit was warranted because "call-back overtime assignments are usually inconvenient." Aside from the interruption of an employee's normal pursuits, this inconvenience was described primarily as the burden imposed on an employee recalled on unscheduled

^{2/} Section 205 of Public Law 763, 83d Cong., September 1, 1954, ch. 1208, 68 Stat. 1105, 1110.

^{3/} See S. REP. NO. 1992, 83d Cong., 2d Sess. 8, reprinted in 1954 U.S. CODE CONG. & AD. NEWS 3816, 3823. See also H.R. REP. NO. 2665 (CONF.), 83d Cong., 2d Sess., reprinted in 1954 U.S. CODE CONG. & AD. NEWS 3861, 3869.

occasions "to spend considerable time in preparing for work and traveling to his place of duty."^{4/}

Consistent with the legislative history of 5 U.S.C. § 5542(b)(1), we have adopted the view that the primary purpose of the 2-hour minimum work credit is to assure adequate compensation for employees for the inconvenience of having to prepare for work, leave their homes, and travel to their work stations to perform unscheduled overtime work.^{5/} Thus, we have held that under the statute employees who are called away from their homes to perform unscheduled overtime work are entitled to the 2-hours' minimum work credit, even though they may not actually perform any work and may instead be sent home from the worksite immediately after their arrival.^{6/} Also, we have held that employees who do perform unscheduled periods of overtime work that merge with their regularly scheduled tours of duty for the day are not entitled to the minimum 2-hour credit, essentially since that situation involves no travel to a worksite induced solely by a recall for unscheduled overtime work.^{7/}

Concerning overtime compensation for work performed at home, we have interposed no objection to Federal employees being paid for work undertaken at their places of residence in certain circumstances, provided the work is of a substantial nature and the employing agency is able to verify that the work has in fact been performed.^{8/} Thus, for example,

^{4/} See Compensation for Overtime and Holiday Employment: Hearings on S. 354 before the Subcomm. on Civil Service of the Senate Comm. on Post Office and Civil Service, 82d Cong., 1st Sess. 4, 20-21 (1951) (statement of Robert Ramspeck, Chairman, Civil Service Commission). See also S. REP. NO. 1992, supra, at 17, reprinted in 1954 U.S. CODE CONG. & AD. NEWS at 3832; and 35 Comp. Gen. 448, 449 (1956).

^{5/} See 40 Comp. Gen. 379, 381-382 (1960).

^{6/} 40 Comp. Gen. 379, supra.

^{7/} See 45 Comp. Gen. 53 (1965).

^{8/} See, generally, B-214453, December 6, 1984; B-182851, February 11, 1975; and B-131094, April 17, 1957.

in a case involving Passport Office employees required to receive and make lengthy telephone calls at their homes outside their regular office hours to resolve problems associated with emergency passport requests, we concluded that the employees could be credited with the performance of compensable overtime work. The conclusion was, however, that the credit was limited to the actual time worked during the telephone calls, as shown in the official logbooks and other records, and that the 2-hour minimum overtime credit provisions of 5 U.S.C. § 5542(b)(1) did not apply to the work performed over the telephone from their homes.^{9/} Although not specifically stated in the text of that decision, the employees' eligibility for the minimum 2-hour credit for "call-back" overtime work was consequently determined to be limited to the occasions when a problem could not be resolved by telephone, and the employees were instead required to travel from their homes back to their offices to take care of the emergency.

Conclusion

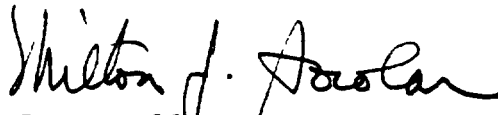
Whenever an employee is called upon to perform unscheduled overtime work, there is inherently involved a certain amount of inconvenience to the employee resulting from the interruption of personal plans or pursuits. As indicated, however, the provisions of 5 U.S.C. § 5542(b)(1) do not authorize a 2-hour minimum work credit on every occasion unscheduled overtime work is performed. Rather, we have repeatedly and consistently expressed the view that personal travel outside the home to a worksite located elsewhere for the sole purpose of performing unscheduled overtime work is a necessary prerequisite to eligibility for the minimum 2-hour work credit authorized under the statute. Moreover, we have specifically held that compensation for unscheduled overtime work performed by employees inside their homes is to be based on and limited to the length of time they are actually engaged in that work.

^{9/} See B-169113, March 24, 1970. Compare also Charles F. Callis, B-205118, March 8, 1982, concerning the application of the de minimis doctrine to claims for overtime compensation for unscheduled official telephone conversations made at home which are not long enough in duration to meet the minimum accrual standards established for overtime compensation.

B-217502

In the present matter, therefore, our view is that the employees called upon to perform unscheduled overtime work in their homes in the circumstances described may be allowed overtime compensation for the work actually done, provided procedures are established for recording and verifying the performance and the duration of the work. It is also our view that they cannot properly be allowed the 2-hours' minimum work credit authorized under 5 U.S.C. § 5542(b)(1) in the absence of a recall to work requiring them to travel from their homes to worksites located elsewhere.

The question presented is answered accordingly.

for 
Comptroller General
of the United States